

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

DAWN K. WASSON,)
)
 Complainant,)
)
 vs.)
)
 LAIE WATER COMPANY, INC.,)
)
 Respondent.)
 _____)

DOCKET NO. 2008-0307

ORDER DIRECTING RESPONDENT TO FILE
AN ANSWER TO COMPLAINANT'S FORMAL COMPLAINT

RECEIVED

2008 DEC 31 A 8:46

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

2008 DEC 29 P 1:21

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

DAWN K. WASSON,) Docket No. 2008-0307
)
Complainant,)
)
vs.)
)
LAIE WATER COMPANY, INC.,)
)
Respondent.)
_____)

ORDER DIRECTING RESPONDENT TO FILE
AN ANSWER TO COMPLAINANT'S FORMAL COMPLAINT

By this Order, the commission orders Respondent LAIE WATER COMPANY, INC. ("Respondent") to file an answer to the attached formal complaint filed by Complainant DAWN K. WASSON ("Complainant"), within twenty (20) days after the date of service of this Order.

I.

Formal Complaint

On December 4, 2008, Complainant filed a "Protest of Proposed Water Utility Rate Increase," in which Complainant alleges, among other things, that Respondent misinterpreted a water service agreement between Complainant and Respondent dated September 1, 1982, failed to monitor and repair its pipes and facilities, and wrongfully increased her water rates.

Although filed as a protest under Hawaii Administrative Rules ("HAR") § 6-61-58, the commission will construe

Complainant's filing as a formal complaint under HAR § 6-61-67. The formal complaint appears to substantially comply with HAR Title 6, Chapter 61, Subchapter 5 of the commission's Rules of Practice and Procedure. Therefore, pursuant to HAR § 6-61-67(e), Respondent must file an answer to the formal complaint within twenty (20) days after the date of service of this Order.

II.

Order

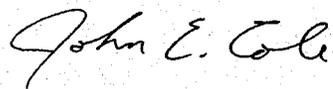
THE COMMISSION ORDERS:

Respondent shall file an answer to the attached formal complaint with the commission within twenty (20) days after the date of service of this Order.

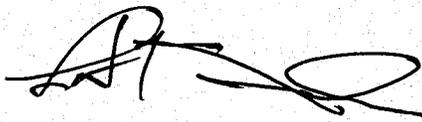
DONE at Honolulu, Hawaii DEC 29 2008.

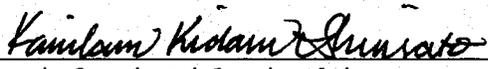
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

APPROVED AS TO FORM:

By: 
Leslie H. Kondo, Commissioner


Kaiulani Kidani Shinsato
Commission Counsel

2008-0307.cp

2008-0307

October 10, 2008

Public Utility Commission of Hawaii
ATTN: Filing Center
465 South King Street, Room 103
Honolulu, HI 96813

PUBLIC UTILITIES
COMMISSION

2008 DEC -4 P 1:39

FILED

RE: In the Matter of Laie Water Company's Proposal to Raise Utility Rate

Dear Filing Center:

Attached please find for filing an original and 8 copies of the following documents:

1. Protest of Proposed Water Utility Rate Increase;
2. Declaration of Dawn K. Wassen in Support of Protest of Proposed Water Utility Rate Increase
3. Certification of Service

Please contact me if you have any questions regarding these filings.

Sincerely,

Dawn K. Wasson
P.O. Box 512
Laie, HI 96762
(808)206-9437
laiekupuna@yahoo.com
Enclosures

Cc: Harold Shepherd - CWA

BEFORE THE PUBLIC UTILITY COMMISSION OF HAWAII

Docket No.

In the Matter of the Application of)	
)	
)	PROTEST OF PROPOSED
)	WATER UTILITY RATE
LAIE WATER COMPANY, Inc.)	INCREASE
)	
)	
For approval of a rate increase pursuant to)	
Hawaii Revised Statutes § 269-16; and)	
Revised Rate Schedules)	

Dawn K. Wasson (Protestor), pursuant to HAR §6-61-58 of the PUC Administrative Code, respectfully submits this Protest of the raising of her water rates by respondent Laie Waer Company (LWC) as per letter to Ms. Wasson dated September 5, 2008 (Letter). HAR §6-61-58 allows "any person" to file "a protest against a water carrier...or public utility...stating the facts constituting the grounds for protest, show how the protestor is affected, and why the proposed increase...may not be justified." In sum, Protestor contends that LWC has misinterpreted the water service agreement between the parties dated September 1, 1982 and its duty to monitor its pipes and water delivery systems as part of its general service agreement to all utility customers. The rate increase should, therefore, be denied.

DISCUSSION

I. THE PROPOSED RATE INCREASE MISINTERPRETS THE SERVICE AGREEMENT BETWEEN THE PARTIES.

The Letter provides that consistent with “that certain agreement dated September 1, 1982 between”, (Attached as “Exhibit 1”), Ms. Wasson and Zions Securities Corporation (predecessor to the Laie Water Company), LWC “has reviewed your water usage for the twelve month period beginning September 2007 and ending August 2008. Our records indicate your average monthly usage during this period has increased from 33.9 thousand gallons per month during the prior 12 months to 48.7 thousand gallons per month.”

The LWC calculated rate of 55,000 gallons per month, however, is not only incorrect but is very high for a household of the type of Protestors. In reality, the LWC has a leak in their piping or other facility systems somewhere off of Protestors property which has remained unrepaired for months and are causing elevated readings in their meters in relation to Protestor’s water usage. This leak is LWC’s responsibility to repair and not Protestor’s.

In addition, LWC provides that “[b]ased on this increased usage, we will be adjusting your monthly flat rate to \$170.00 per month effective your September 2008 bill.” Rather than ask Protestors and other customers to pay for water that is being wasted through LWC’s leak in their piping or other facility systems somewhere off of Protestors property, LWC needs to monitor and repair the pipes or facilities that are causing this leak.

Protestor, in fact, has requested that LWC check their meters and LWC refused stating that it was not their system but that it was protestors water usage that is the problem. This is a

RESPONSE TO MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE OR TO PARTICIPATE P. 2

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violation of LWC's general service agreement not to check the meter and to "shut it off" if the dials are still going and if there is a known a problem with their system. LWC intentionally and in violation of its service contract held the water use at the 50,000 gallons per month figure to justify usage.

In addition, the LWC is violating its fiduciary responsibility to the Protestor by charging Protestor for the overall of cost and profits to LWC . Instead, each Protestor should be billed according to the cost of transporting water to her home.

II. Respondent Does not Own the Water Rights in Question

The "State has an obligation to protect, control, and regulate the use of Hawaii's water resources for the benefit of the people." Article XI, section 7 of the Hawai'i Constitution (1978). That these proceedings and the Commission are obligated to protect the rights of Proposed Intervenors is further illustrated by Article XII section 7 of the Hawaii Constitution which provides that the "state affirms and shall protect all rights customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are decedents of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778...."

The rate increase, therefore, will not only directly impact Protestor on a financial bases but, whether LWC has authority to impose the rate increase against Protestors in these proceedings, is questionable. HRS § 7-1 provides that the "springs of water, running water and

RESPONSE TO MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE OR TO PARTICIPATE P. 3

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roads shall be free from to all, on lands granted in fee simple and provided that this shall not be applicable to wells and water courses which individuals have made for their own use.” Further, LWCr has yet to illustrate that it retains authority to increase water rates against Protestor when it has not shown that its ownership of the water takes precedent over that of Protestor.

Moreover, any rate increase is clearly in conflict with the deed under which Protestor obtained the lands allegedly retaining the riparian water rights attached to the water it supplies to Protestor. Page one of this deed provides that the such land will perpetually be used for “reserving the rights of native tenants” of the Laie community.” James W. Austin and Charles Kaniana to HS Howlands December 6, 1861 (Exhibit A). Increasing water rates, however, to almost double the current amount that Protestor currently pays clearly does not in any way “benefit the Native Hawaiiin Community.” This is illustrated all the more by legal precedent which provides that “[n]ative tenants were not required to pay a commutation tax since the chief or *konoki* of the *ahupua*’s or *’ili kupono* in which the *kuleana* was located was responsible for the commutation.” Native Hawaiiin Rights Handbook Melody Kapilialoha MacKenzie p. 8 1991.

Conclusion and Requested Action

Protestor respectfully requests that the proposed rate increase be denied.

Respectfully Submitted this 24th day of September, 2008

RESPONSE TO MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE OR TO PARTICIPATE P. 4

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Hawaii State
Honolulu County

On this 31st day of Oct. 2008
appeared Dawn Wasson whose sig-
nature is below, before me Jessie
J. Agustin, Notary Public of Hawaii.

Dawn K. Wasson
Signature



Document Date:	10-31-08	#Pages:	1
Notary:	Jessie J. Agustin	First Circuit:	
Doc. Descr.:	Opposition in Water		
	Increase	Date:	10.31.08
Notary Signature:		Date:	

Jessie J. Agustin
Jessie J. Agustin

RESPONSE TO MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE OR TO PARTICIPATE P. 5

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ACKNOWLEDGMENT OF SERVICE

I certify that I have this day caused to be served the foregoing document:

1. PROTEST OF WATER RATE INCREASE.

upon all parties of record in this proceeding by mailing a copy properly addressed with first class postage prepaid or by electronic means pursuant to § 6-61-18 and § 6-61-21 of the Hawaii Administrative Code to the following parties or attorneys or parties:

Catherine Awakine, Esq.
Executive Director Division of Consumer Advocacy
335 Merchant Street, Room 326
Honolulu, Hawai'i 96813

Michael H. Lau
Moriyama, Lau & Fong LLP
Davis Pacific Center
841 Bishop Street, Suite 400
Honolulu, HI 96813

I further certify that on September 24, 2008, I caused to be mailed the original and five (8) copies of the above documents with the Public Utility Commission of Hawaii, via first class mail, to the following address:

Public Utility Commission of Hawaii
ATTN: Filing Center
465 South King Street, Room 103
Honolulu, Hawaii 96813
E-mail: HawaiiPUC@hawaii.gov

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on September 24, 2008 at Laie, Hi.

Representative for Proposed Intervenors,

RESPONSE TO MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE OR TO PARTICIPATE P. 6

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RESPONSE TO MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE OR TO
PARTICIPATE P. 7

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CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI (Two Copies)
EXECUTIVE DIRECTOR
DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. Box 541
Honolulu, HI 96809

MICHAEL H. LAU, ESQ.
KENT D. MORIHARA, ESQ.
KRIS N. NAKAGAWA, ESQ.
MORIHARA LAU & FONG LLP
Davies Pacific Center
841 Bishop Street, Suite 400
Honolulu, HI 96813

Counsel for RESPONDENT LAIE WATER COMPANY, INC.

DAWN K. WASSON
P.O. Box 512
Laie, HI 96762

COMPLAINANT